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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/808,529	03/25/2004	Jung-Shen Lien	MR3315-9	5942
4586	7590	11/01/2004	EXAMINER	
ROSENBERG, KLEIN & LEE 3458 ELLICOTT CENTER DRIVE-SUITE 101 ELLICOTT CITY, MD 21043			PATEL, MITAL B	
			ART UNIT	PAPER NUMBER
			3743	

DATE MAILED: 11/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/808,529

Applicant(s)

LIEN ET AL

Examiner

Mital B. Patel

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 March 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Priority

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Drawings

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: Reference character 30. Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Objections

3. Claims 2-10 are objected to because of the following informalities: Independent claim 1 sets forth a three-dimensional structure mask in the preamble. However,

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dependent claims 2-10 recite only a three-dimensional structure. In order to maintain consistency, the Examiner suggests that claims 2-10 either recite a three-dimensional structure mask in the preamble or merely a mask. Appropriate correction is required.

4. Regarding claim 8, the term "type" renders the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by "type"), thereby rendering the scope of the claim(s) unascertainable. See MPEP § 2173.05(d).

5. Regarding claims 8 and 10, the use of the phrase "can be" also renders the claim indefinite. Correction is required.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Bostock et al (US 6,123,077).

8. **As to claim 1**, Bostock et al teaches a three-dimensional structure mask **10** comprising: an upper portion **14** positioning in the upper place of said three-dimensional structure mask, and a nasal bridge notch **28** being in an adequate position; a middle portion **12** positioning in the middle place of said three-dimensional structure mask, and positioning in the down side of said upper portion; and a lower portion **16** positioning in the lower place of said three-dimensional structural mask, and a nasal bridge notch

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being in an adequate position placing in the down side of said middle portion; wherein the upper portion, the middle portion, and the lower portion reform a one-piece structure **(See Figs 4-6).**

9. **As to claim 2**, Bostock et al teaches a three-dimensional structure mask, wherein the middle portion is composed of fiber combiners or fiber composites **(See Col. 8, lines 6-54).**

10. **As to claim 3**, Bostock et al teaches a three-dimensional structure mask, wherein the upper portion and the lower portion have an optimum width size which is equal to half width of the middle portion **(See Col. 5, lines 52-67 and Col. 6, lines 1-27; please note the terms height and weight are relative terms as they are not defined with respect to a particular orientation with respect to structural elements).**

11. **As to claim 4**, Bostock et al teaches a three-dimensional structure mask, wherein the two sides of the upper portion and the lower portion are cut as four-beveled edges, and forming a polyhedron structure by comprising with the middle portion **(See Col. 7, lines 40-65).**

12. **As to claim 5**, Bostock et al teaches a three-dimensional structure mask, wherein the middle portion can extend for enhancing a breathing clearance with tight seal **(See Figs. 4-6).**

As to claim 6, Bostock et al teaches a three-dimensional structure mask, wherein the upper portion and the lower portion of a mask are folded in a reverse direction for avoiding for avoiding a contacting pollution from touching the inner surface **(please note the recitation of folded in a reverse structure is directed to a process**

and not a product, therefore, patentable weight is given to the end product; "Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985) (citations omitted)).

13. **As to claim 7**, Bostock et al teaches a three-dimensional structure mask, wherein said mask comprises with two straps **18,18'**.

14. **As to claim 8**, Bostock et al teaches a three-dimensional structure mask, wherein said strap includes a thread type, a belt type, and a plane type, and can be an ear-hang type, a head type, or a jointed type (**See Col. 5, lines 13-15**).

15. **As to claim 9**, Bostock et al teaches a three-dimensional structure mask, wherein a middle notch placing in an adequate position of the middle portion, and the middle notch is used to support the middle portion (**the Examiner considers the middle notch to be that created by elements 15 and 17**).

16. **As to claim 10**, Bostock et al teaches a three-dimensional structure mask, wherein said middle notch can be either horizontally or vertically placing in an adequate place of the middle portion (**See Fig. 4**).

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Conclusion

17. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US 5701892, US 4827924, US 4628927, US 4419994, US 3971369, and US 3603315.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mital B. Patel whose telephone number is 703-306-5444. The examiner can normally be reached on Monday-Friday (11:00-7:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett can be reached on 703-308-0101. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

 10/31/04
Mital B. Patel
Examiner
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